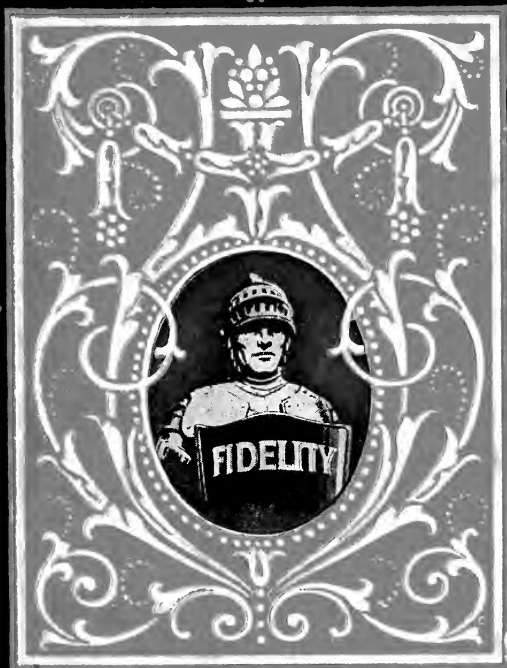


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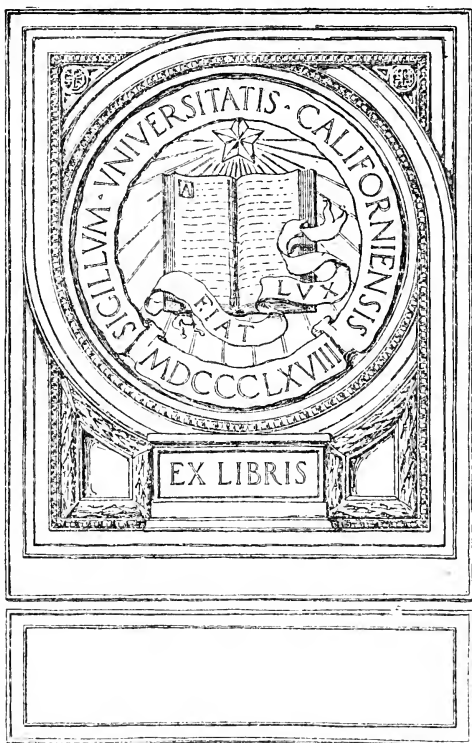


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Witness  
Whereof"*



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# *"In Witness Whereof"*

By  
Harley F. Drollinger  
Manager, New Business Department  
The Fidelity Trust Company  
of Buffalo



The Fidelity Trust Company  
of Buffalo

TO THE  
ADMINISTRATOR

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D7

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THE FIDELITY TRUST COMPANY OF BUFFALO



## TABLE OF CONTENTS

Brenton & Company . . . . .	7
Depository Under Reorganization Plan . . . . .	97
Disbursing Agent . . . . .	105
Escrows . . . . .	115
Fiscal Agent Under Municipal Bond Issue . . . . .	61
Receiver—Assignee . . . . .	121
Registrar . . . . .	55
Safe Keeping Agent . . . . .	91
Transfer Agent . . . . .	35
<i>Protecting the Stockholder . . . . .</i>	40
<i>Problems in Connection with the Transfer of     Stock . . . . .</i>	44
Trustee Under Corporate Bond Issue . . . . .	69
<i>Corporation Bonds Secured by Mortgages on     Real Property . . . . .</i>	76
<i>Equipment Trust Bonds . . . . .</i>	78
<i>Collateral Trust Bonds . . . . .</i>	83
<i>Debenture Bonds . . . . .</i>	85
Voting Trustee . . . . .	111

## NOTE

**T**HE business romance of Brenton & Company has been made a part of this booklet in order to set forth some of the many problems actually encountered by every corporation at one time or another during its corporate existence. The solution as well as the problem has been included in the story in the hope that it may be of some value to officers of corporations when these exigencies arise.

The extent to which a trust company may economically serve and promote the best interests of corporations is but little recognized and appreciated by many executives.

Believing that an exposition and an understanding of the mutual relations between corporations and trust companies will result in simplifying many complicated and onerous corporate activities we have dedicated our booklet to this cause.

Attention is called to the many points of law that may arise in connection with the corporate problems discussed in this booklet. Corporate executives should discuss all such matters in detail with the corporation's attorneys.



## BRENTON & COMPANY

**A**LFRED BRENTON was a jobber who for twelve years had confined his business activity to the sale of woolen goods. He had visited several large mills in the New England States on many occasions and had become greatly interested in the various manufacturing methods employed by the larger mills. In some of the smaller ones he noticed a total indifference to modern methods of manufacture. If the improved and more economic methods of the larger mills could be installed in one of the smaller ones, Brenton felt that such a mill would be extremely profitable.

Alfred  
Brenton

One of these mills could be found in Cordona, a city having a population of 90,000. Brenton had bought some of their goods and found them of very high quality. He was unable to obtain the supply he needed, however, and no satisfaction could be obtained as to possible future shipments, so he discontinued the line.

On one of his Eastern trips he stopped off at Cordona and went to the mill. They had an excellent building, some very good machinery, looms, water power and everything

The Empire  
Mill

to make a first class mill from a mechanical standpoint. Morale and spirit among the employees, however, were utterly lacking. The indifference of the management was reflected in the general personnel and Brenton soon realized why he could obtain no service from the mill. A call at the Cordona Trust Company and an interview with John Strutts, the president, confirmed the general appraisal Brenton had made of the situation. Mr. Strutts said that indifference and negligence had resulted in the loss of most of the Empire mill's customers. Strutts prophesied a liquidation of the Empire in the near future unless their policy was radically changed. Brenton frankly told the bank president he was interested in the mill and asked that a telegram be sent him if a liquidation of the Empire seemed imminent.

Seven months later Brenton received a wire from Strutts advising him to come at once to Cordona. Upon arrival Brenton learned that the Empire mill was financially involved and that the stockholders had consented to a liquidation of its affairs.

After negotiations, covering a period of several days, Brenton secured an option on the Empire property for \$85,000. He

unfolded his plans to Mr. Strutts, President of the Cordona Trust Company, who offered his support in the undertaking. This was just the chance Brenton had been seeking. He had a large number of customers whom he had been serving for twelve years to their entire satisfaction. The Empire mill had an excellent reputation for quality of manufactured goods, but their service had been indifferent and most unsatisfactory. When he returned to his home Brenton had little difficulty in gaining the support of several friends who advanced sufficient money to pay for the mill. A Corporation was formed known as Brenton & Company. Alfred Brenton was elected President and General Manager of the Company.

Organization  
of Brenton &  
Company

A meeting of the employees was called and Brenton gave an extended talk to a group of workers who totally lacked enthusiasm and spirit. He told them he had built up a large trade during the past twelve years as a jobber and that he had now decided to become a manufacturer. It was his desire to retain the services of all employees who had formerly been connected with the Empire provided they took a new lease on life, manifested some enthusiasm and did an honest day's work. Further, it

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## *The Fidelity Trust Company of Buffalo*

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was his intention to allow his employees to become stockholders in the corporation after they had been connected with the company continuously for eighteen months. Special consideration would be given to employees who discovered methods of producing goods more economically, and for this purpose a Suggestion Box would be placed in the office where it would be easily accessible to all employees.

### **Production Begins**

Two weeks later Brenton & Company became an actual entity when at eight o'clock on Monday morning the factory whistle called the former employees back to their respective positions. Brenton & Company was a vastly different organization from what the Empire mill had been.

The employees liked the frankness of their employer and decided to do their part, feeling confident Brenton would live up to his promises. The looms hummed in the mill during the next three years, production was greatly increased and it became a problem to sell all the goods produced.

Brenton needed more salesmen, so he decided to pick from his employees five men who could learn the selling end of the business. Within a week ten men had been chosen from whom Brenton picked five of

the most promising. Six weeks' training under Brenton's personal supervision prepared them for their task. They started on the road much better qualified to interview prospective customers on a business basis than most salesmen of competitive lines, for they all had practical factory experience and knew their line from the time the wool left the sheep's back until it was woven into the various patterns and boxed for shipment.

It was at this time that Brenton & Company experienced their first difficulty. Fourteen months previous, John Kraver, Brenton's friend and business associate, had died. He was the owner of 150 shares of the company's stock. The executor of the estate decided to sell all of Kraver's holdings and convert them into cash. A purchaser was readily found. The certificates were endorsed by the executor of Kraver's estate. His endorsement was properly witnessed and the certificates were presented to Brenton for transfer into the name of the purchaser. The transfer had been made and entered on the books of the company. When the executor was making final distribution of the estate it was discovered that Kraver had, by his will, specifically bequeathed the shares of stock in

The  
Company's  
First  
Difficulty

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## *The Fidelity Trust Company of Buffalo*

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The  
Company's  
First  
Difficulty

Brenton & Company equally to his three children. The value of the stock had increased materially since the organization of the company. Furthermore, it had been very closely held and this had been the first sale and transfer. The three children demanded the 150 shares of stock which had been bequeathed to them.

Kraver's executor had not been required to give a bond though he personally possessed very limited means. Therefore, being unable to recover the shares from the executor of the estate, Kraver's children subsequently made a demand on Brenton & Company for 150 shares of stock.

Brenton replied that the executor was responsible and that they must look to him for relief. They became so insistent that Brenton decided to consult his attorney regarding the situation. He was very much surprised, and shocked as well, to learn that the corporation was liable to the beneficiaries for the stock transferred. It was necessary, therefore, for the corporation to provide Kraver's heirs with the stock which had been transferred. Owing to the fact that the executor was not required to give bond, and also that he was not financially able to make good, a loss to the corporation resulted.



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*“In Witness Whereof”*

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He related his experience to Strutts, his banker friend, and was told that the law required a corporation to protect the interests of bona fide stockholders in the event that certificates were improperly transferred, stolen or forged. He was further informed that these were only a few of the many intricate problems to be met in handling stock transfers.

Having had this experience Brenton was anxious to learn whether there was some way by which his company's interests might be safeguarded. Strutts replied that the Cordona Trust Company acted as transfer agent for many large corporations which did not consider themselves qualified to pass upon the many questions that arose in connection with the transfer of their securities. After thoroughly investigating the facilities of a trust company for this purpose, Brenton decided to have the Cordona Trust Company act as transfer agent for the stock of Brenton & Company. The necessary formalities were complied with and all transfers thereafter were passed upon by the trust company which specialized in that class of work, and no further financial loss in this connection was experienced.

Future  
Safeguards

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## *The Fidelity Trust Company of Buffalo*

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### Factory Expansion

The sales force had been exceedingly energetic, and the quality of Brenton's woollens was so satisfactory that he became deluged with orders and as a result, delivery became a serious problem. The situation became so acute that Brenton had to plan an expansion of the factory. He was confronted with considerable difficulty in financing the proposition. Together with his bankers he went over the problem in detail, and after some discussion Strutts advised him not to sell the readily marketable securities in which their reserve and surplus had been invested, but if possible to meet the situation by selling an issue of preferred stock. The surplus and reserve could be held as an emergency fund and the company could maintain a strong position with which to meet any sudden and unexpected financial demand, which proved to be a valuable precaution. Strutts was able to be of considerable assistance to Brenton. The sale of the preferred stock was authorized by the stockholders, who subscribed for part of the issue, and the balance was sold largely to their customers in small blocks. It was promptly subscribed and Brenton had thereby accomplished a three-fold purpose; he had financed the expansion of the factory;

he still held the company's surplus and reserve fund intact; and finally, he had tied his customers to Brenton & Company with the bond of ownership.

In order to safeguard equally the interests of the preferred and common stockholders, the Cordona Trust Company was appointed transfer agent of the preferred stock as well as of the common. As an additional precaution the Soverill Trust Company of the same city was appointed registrar of the preferred stock. As registrar, the Soverill Trust Company countersigned each certificate, vouched for the fact that it was one of the duly authorized issue and thereby certified that the amount legally authorized was not over-issued.

Protection  
of Stock-  
holders'  
Interests

In differentiating between the duties of a transfer agent and a registrar, Strutts explained that the transfer agent passed upon the title to the property and that the registrar recorded the transfer. No man would buy a piece of real estate until a search was made to assure the purchaser that the title was clear, nor would the same man fail to have his deed properly recorded. Likewise, no transfer of stock should be made where the title is irregular or in doubt. The title having been approved and the transfer

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## *The Fidelity Trust Company of Buffalo*

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made, it should become a matter of record on the registrar's books.

On the following dividend date Brenton complained of the details and additional work imposed upon his cashier in mailing dividend checks. Mr. Strutts explained that the trust company assumed details of this nature for other large corporations and relieved them of this burden. Acting as a disbursing or financial agent the trust company received one check from the corporation to cover the total amount of dividends. This ended the matter so far as the corporation was concerned. The trust company made out individual dividend checks, addressed, stamped and mailed the envelopes. In the event of an inaccurate address a search was made for the correct one. With its large clerical force and special organization such a matter was comparatively easy for the trust company whereas it would be somewhat burdensome for a corporation not organized for such purposes.

After an interview with the heads of other corporations who had made such arrangements with the trust company Brenton immediately adopted a similar plan and appointed the Cordona Trust Company

financial agent for his corporation. Thereafter the treasurer mailed a single check to the trust company prior to the dividend date, covering the entire amount of the preferred and common stock dividends. It was then up to the trust company to make out and mail separate dividend checks to individual stockholders and to see that these checks reached the proper hands.

During the next six years Brenton & Company with its new factory greatly expanded its business. The earnings were large and the net profits, in excess of dividend requirements, were placed in a reserve account to cover future contingencies. The reserve was invested in high grade bonds, carrying an interest rate of 5%. Being well known listed bonds they were readily marketable and could be converted into cash on very short notice. Thus, if the company were in need of additional funds they could easily turn to their reserve fund. A line of credit had been established at the bank, but Brenton had never used more than one-half the amount to which he was entitled because his business had been excellent and collections very prompt.

Building a  
Reserve

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## *The Fidelity Trust Company of Buffalo*

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Export  
Markets

Brenton & Company established a country-wide reputation for the quality of their product which soon found its way to South American countries, and eventually a demand for Brenton's woollens became very brisk in Brazil, Argentina and Uruguay. In order to promote relations with his customers in South America Brenton personally made a trip to the several countries, which required six months absence from the factory. In addition to getting a line on the possibilities of South American markets, Brenton also studied the habits of the people, their banking methods, as well as the general credit situation. He personally booked a large volume of business in addition to making a general appraisal of the business conditions. The latter was of considerable value to his Export Department.

Clouds on  
the Horizon

Upon his return Brenton was confronted with a serious situation. A large corporation, owning considerable properties in various sections of the country including silk, cotton and woolen mills, had been watching the progress and expansion of Brenton & Company and decided to obtain control of the mill. Through various individuals they had accumulated 40% of the stock in Brenton & Company, which would

virtually control the company unless Brenton could in some way tie up the other 35%, as he personally owned but 25% of the stock. Brenton called on Strutts to obtain a personal loan for the purpose of buying a majority of the outstanding stock. The other crowd were just as eager and the price rose so rapidly that Brenton's loan was soon exhausted and he had secured but 10% more of the stock. His adversaries had accumulated an additional 5% and the odds were badly against Brenton, for they had unlimited funds for the operation while Brenton had reached the limit of his personal resources. He now controlled 35% of the company's stock and his adversaries controlled 45%. The situation was very critical and seemed hopeless. Brenton decided to call upon Strutts to save the situation, if possible. It so happened that the other 20% of stock was held by several of Brenton's friends who were located in the city where Brenton formerly resided. Up to this time his adversaries had not succeeded in locating these stockholders. Brenton was financially unable to purchase the stock, so Strutts advised him to call upon the holders at once to discuss the situation with them. Both

Trouble  
Brewing

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## *The Fidelity Trust Company of Buffalo*

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Brenton and Strutts left for the West that night. On the following day they called the stockholders together and explained existing conditions. Brenton's friends were very much alarmed and explained that they had originally gone into the company because of their knowledge of Brenton's ability and integrity. They did not want to sell their stock because of the attractive dividend return, nor did they care to remain in the company if Brenton's absolute control was to be jeopardized in any manner. Therefore, to safeguard their mutual interests, their stock and that of Brenton, which together constituted 55% of the amount outstanding, was tied up in a voting trust for five years. The Cordona Trust Company was made trustee to vote the stock for the election of directors in accordance with the terms of the trust agreement, and the control of Brenton & Company was therefore guaranteed throughout the term of the voting trust. Under the conditions of the agreement any individual desiring to sell his stock during that period, was obliged to give the other parties to the agreement two weeks' option to purchase it. The stock affected by the voting trust was endorsed over to the Cordona Trust Company,



which in turn issued trustees' certificates as receipts for stock so deposited. When the voting trust terminated, the several parties who had worked so closely together during the past five years continued their relationship on substantially the same terms and conditions as outlined in the voting trust agreement.

For nearly eight years business had been prosperous, money rates were low and the greatest optimism prevailed. During the last eighteen months of this period, while all business was booming, expansion seemed the day's order and money values became greatly inflated. Brenton & Company, like all others, was inoculated with the germ. Its foreign business had developed and grown to a surprising degree; domestic business had greatly increased, and Brenton & Company was using its full line of credit at the bank. The company could not make prompt delivery of all the orders booked, and it became necessary to expand the plant. Brenton consulted his banker, Mr. Strutts, who advised him to finance the expansion program by an issue of bonds secured by a first mortgage on the property. Interest rates had been rising and were at that time high, so that any liquidation of bonds in the

Overexpan-  
sion

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## *The Fidelity Trust Company of Buffalo*

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Overexpansion

reserve fund would necessitate considerable loss as they were then quoted at about 80. Strutts advised that the company issue short term first mortgage bonds bearing 7%. The Cordona Trust Company held the mortgage to the property as trustee of the bond issue since individual mortgages to each purchaser would be out of the question. Brenton & Company had an excellent financial standing and the issue was soon absorbed by the investing public. The additions to the plant were completed and the machinery installed within six months and production was greatly stimulated. Practically all of the increased production was exported to South America, and for a time it seemed that even the accelerated production would be insufficient to meet the export demand. At this point, however, war broke out between three South American countries, which utterly demoralized the export market. Goods which had been shipped were refused at the ports, letters of credit were revoked, and Brenton & Company was in a sad plight indeed.

Inflation

Domestic business had been repeatedly warned that inflation had reached such proportions that curtailment was necessary if an actual crisis was to be prevented, and

that emergency brakes must be applied to the wheels of expansion. Optimism was so rampant, however, that only a sudden rise of the rediscount rates could bring about a sane and conservative program. With the readjustment there came a severe business depression. This, coupled with the situation in Brenton's export market, presented a very acute problem. His purchases, labor, raw materials, etc., had to be paid for; his export goods were tied up in foreign ports; domestic demand struck the snag of a buyers' strike; money rates were high, and he had used up his entire banking line. How could the situation be met? Strutts, his banker, went over every detail of the company's affairs with him. He still had the reserve to fall back on, but liquidation would mean a serious loss, as the securities had fallen to approximately 74. Strutts advised him to issue three-year collateral trust bonds at 8%. All of the bonds in the reserve fund were deposited with the Cordona Trust Company which held them as trustee, to safeguard the investment of the bondholders. With some difficulty the issue was floated and the company's affairs were tided over.

The dissension in South America was of

short duration. Fourteen months later the war had ceased and they were on a sane constructive basis. Brenton had stored his merchandise in warehouses when the trouble broke out; therefore, when conditions again became normal he was the only manufacturer who could make immediate delivery. Business having been at a standstill for months, an active demand for woollens arose when the clouds of war were blown aside. Brenton received high prices for his merchandise because he could make immediate delivery. He promptly prepared to keep up a constant supply by setting his factory again in motion. Having been ready for instant delivery when the demand arose, he occupied a premier position with respect to future orders. His large export business, together with the high prices received for merchandise, compensated for the domestic depression which lasted for nearly three years. Profits from this large export business enabled him to build up substantial reserves with which to pay the collateral trust bonds when they became due.

All coupons and bonds were carefully checked by the Cordona Trust Company and destroyed. The company's collateral

was returned to it; thus the reserve fund still remained intact and the company was in a strong financial position again.

By the close of the business depression money had become more plentiful. Reserves had accumulated in the banks and bonds forming the reserve fund had risen steadily in price to 96, which was a considerable recovery from their low point in the early stage of the depression.

While the company's bonds were held by the Cordona Trust Company it received semi-annually a report in detail concerning every security constituting the reserve fund which had been deposited as collateral for the short term bonds. This appealed particularly to the treasurer of Brenton & Company, for he had before him a review of the condition of the securities from financial experts which he could not hope to match since he was unable to spare the time necessary for such purposes. Furthermore, his company could not afford to spend the amount of money required for the various financial services, magazines and periodicals used by the bank, as their holdings would not warrant such an expenditure. He approached Strutts to see if arrangements could not be made whereby the trust

Investment  
Safeguards

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## *The Fidelity Trust Company of Buffalo*

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company would continue to hold the securities of their reserve fund and give them the same care they had received while deposited as collateral for the short term bonds. Mr. Strutts took him into the huge vault and pointed to a number of large compartments which were securely locked and safeguarded. "In there," said Strutts, "are securities worth millions of dollars. They belong to individuals and corporations who are too busy to look after them properly. Our safe-keeping department is responsible for their physical safety. We cut the coupons, credit them to the various accounts, sign ownership certificates, and search our financial publications and services for possible information concerning them. If we observe any interesting data concerning any of the securities, such information is promptly forwarded in concise form to the individual or corporation under whose account it is lodged."

Brenton & Company transferred its securities to the Cordona Trust Company under a safekeeping account, and found it of such great value that several officials of the company likewise opened safekeeping accounts for their personal securities.

In certain South American countries the

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*"In Witness Whereof"*

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company's agents found considerable difficulty in selling their goods. The trade demanded cheaper quality. In some sections of the United States a like demand had grown for cheaper goods. Having inspired the employees of Brenton & Company with a zeal for quality, Brenton decided that cheaper goods, if manufactured at all, must be made at an entirely different mill. He had been seeking such a factory for some time when the secretary of the Cordona Chamber of Commerce called him on the telephone and informed him that the Regis mill at Eureka was in financial difficulties and that he thought a deal could be made with them. Brenton arrived at Eureka the next day and found that the Regis management had made purchases far beyond their capacity to pay. A large consignment of wool had been offered in Boston at a sacrifice price and the Regis mill, being over zealous to gain an advantage over certain competitors, bought the entire lot. Business had slackened and they were unable to meet their bills. Brenton had been on the ground studying the situation for several days when he called at the Eureka Trust Company and found that certain parties were determined to force

The  
Demand for  
Cheaper  
Goods

The Regis  
Mill

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## *The Fidelity Trust Company of Buffalo*

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collection of their accounts by petitioning for a receiver. Brenton was well satisfied with the mill and felt that it could pull out of present financial difficulties if allowed sufficient time to do so. He personally took up the claims of the three firms who were about to force the issue. To prevent similar action by other hostile parties he petitioned the court for a reliable and non-interested receiver. The Eureka Trust Company was appointed. With its special facilities it succeeded in liquidating the debts of the company in five months.

### **Purchase of the Regis Mill**

The working capital of the Regis mill was exhausted and there were no funds with which to carry on the business. Having been in financial straits capital would hesitate before coming into the concern. Brenton, having agreed to assume all liabilities of the company made a deal, subject to the court's approval, whereby he agreed to buy the mill, paying for it by issuing stock in Brenton & Company on the basis of one share of Brenton & Company for three shares of Regis mill stock. The Cordona Trust Company was appointed depositary to effect the exchange of securities. All shares of the Regis mill stock, properly endorsed, were deposited with the Cordona Trust



Company. Temporary trust receipts were given to the owners thereof until new certificates were engraved. When the certificates were engraved the temporary receipts were called in by the trust company for conversion into permanent certificates representing the ownership of shares in Brenton & Company.

Exchange of  
Securities

In order to put the mill in first class condition considerable improvements were decided upon which involved the construction of additions to the factory and a suitable warehouse. When bids were taken it was found that a local contractor's proposal was by far the lowest figure submitted. He was, however, unknown to Brenton who seemed somewhat dubious as to his ability to fulfill the construction contract.

A local banker who was acquainted with the contractor agreed to loan him the money to complete the job if Brenton would deposit a certified check in escrow to be delivered upon satisfactory completion of the buildings. The check was placed in escrow with the Eureka Trust Company which delivered it to the banker when the contract had been fulfilled. In this manner both time and expense had been saved in the

Financing  
the New  
Factory  
Additions

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## *The Fidelity Trust Company of Buffalo*

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erection of buildings by a contractor whose ability was unknown to Brenton.

Brenton & Company now had a well rounded organization to produce any quality of goods demanded by either domestic or foreign trade; and here we leave them, a large, progressive organization forged by the many tempering fires which usually attend the career of a progressive and prosperous manufacturing organization.

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Coincident with the evolution and great financial growth of corporations within the last generation there have developed innumerable duties of a fiduciary or public trust nature.

It was at once apparent that a trustee having the necessary qualifications of continuous existence, responsibility, experience, impartiality, constant application to duty, complete accounting system, freedom from sickness, disability and infirmity, could be provided only by a corporation organized for that specific purpose.

Laws were therefore enacted authorizing the organization of trust companies. Their development and tremendous growth has

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*“In Witness Whereof”*

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been little short of phenomenal. It has recently been stated that trust companies are now performing trust duties in connection with corporate securities worth approximately twelve billion dollars.

Problems identical with those of Brenton & Company may be encountered by any corporation. The various services rendered by trust companies are merely mentioned in the story without explanation. Each is, however, discussed under separate headings on the following pages of this brochure.

For many years The Fidelity Trust Company of Buffalo has been extremely active in this field, and as a consequence is eminently qualified and well equipped to perform trust duties of any nature. Further discussion of these services either in person or by correspondence is unreservedly welcomed.

The Fidelity  
Trust  
Company of  
Buffalo



**TRANSFER AGENT**





## TRANSFER AGENT

**I**N the State of New York a corporation in its simplest form may consist of three individuals, who together subscribe capital stock of \$500.00. Three directors are required; therefore these same individuals may constitute the Board of Directors. When the \$500.00 of capital stock is all paid in and the organization completed the corporation may legally begin to function.

Transfer  
Agent

Each of the stockholders receives a certificate which is evidence of the ownership of a certain number of shares of the capital stock. Ownership of shares in a corporation is personal property which may be transferred by one individual to another. The stock certificate, like a deed of real estate, is simply evidence of ownership of the property which it represents; and the loss or destruction of either does not mean that the actual owner loses his equity in the shares of the corporation in the first instance, or the real estate in the latter case. Upon satisfactory proof of loss, together with proper guarantee, a new certificate may be issued. If a deed to certain real property is forged it does not follow that the bona fide owner of

**Transfer  
Agent**

the property loses it. Likewise, the owner of shares in a corporation does not lose his property if a certificate or an endorsement is forged. The stock record of a corporation is somewhat similar to the books of record in which real estate transfers are recorded. Upon the stock records a complete history of the shares of stock may be traced, and in each case the keeper of the records must be sure that the transfer of ownership is absolute and genuine. In the case of stock he must be sure that the endorsement is genuine, not forged, and that the individual seeking the transfer is actually entitled to the stock. Formerly, officers of a corporation kept the stock book, ledger and other books of record and made all stock transfers as well. Because of the responsibilities involved, well managed corporations now assign these duties to trust companies, which have departments organized for this specific purpose.

In the simplest form of corporation mentioned above, transfers of stock may not be so numerous, but the duties and responsibilities in this respect are as great as those of a corporation having a capital of millions. Each State has adopted its own laws governing corporations, and those of each



State are uniform regardless of whether such corporations be of the simplest nature having a capital of \$500.00, or the largest with a capital of many millions. On the following pages a questionnaire has been introduced to set forth a few of the many problems with which a transfer agent is constantly confronted. By referring to this questionnaire executives of a corporation may be greatly astonished at the numerous intricate problems involved in the transfer of stock under present laws, any one or all of which may occur in any corporation.

In the early history of our country corporations were few and transfers infrequent. Likewise laws governing corporations were very simple. With the growth and development of America, however, it became necessary to marshal our national resources to develop properly our inherent wealth. Therefore thousands of corporations have been organized and the various States have kept pace with the movement by constant change and development of corporation laws to protect fully the interests of stockholders.

When trading in stocks of various corporations became more active it was natural that a considerable proportion of such

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## *The Fidelity Trust Company of Buffalo*

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### Transfer Agent

trading should be done in New York City. With thousands of shares changing hands daily it was found both laborious and unsafe to send securities by mail to the various offices of corporations, located throughout the country for transfer. Therefore the New York Stock Exchange adopted a regulation requiring every corporation whose stock was listed on the exchange to appoint as transfer agent a trust company or other duly qualified agent in New York City to facilitate the work. Subsequently other large cities adopted similar regulations. It can readily be seen that the trust company was originally chosen transfer agent as a matter of convenience.

Fraud, theft and forgeries in connection with stock certificates ultimately became so frequent with consequent losses to stockholders that the different States were compelled constantly to change their corporation laws to meet various emergencies. The full responsibility was placed upon the corporation whose stock was being transferred. In this way the loss was passed on to the corporation, making it the duty of officers to see that all rights of stockholders had been properly recognized. This required constant vigilance to keep pace with new laws

that might be enacted to safeguard stockholders' interests. An arduous task was thus added to the duties of officers whose time could be utilized with greater profit to the corporation when directed in other channels. As a result corporations now appoint trust companies to act as transfer agents for their capital stock, not merely as a matter of convenience, but for the sake of safety. Hundreds of corporations, both large and small, whose stock is not listed on stock exchanges, now use trust companies as their transfer agents in order to take advantage of the superior equipment of the modern trust company, and at the same time avoid the burdensome clerical work involved.

Transfer  
Agent

With a special department devoted to this work, and with a large volume of this class of business, a trust company can afford to keep constantly in contact with the activities of various State legislatures. Thus it becomes familiar with any changes in corporation laws which may be enacted, and is able to prevent considerable loss to the corporation.

A few of the many decisions of courts in this respect are here given to show the great risk involved in the transfer of corporate stock.

## PROTECTING THE STOCKHOLDER

(U. S. Supreme Court: *Telegraph Company vs. Davenport* 97 U. S. 369 at page 371). "The officers of the company are custodians of the stock book, and it is their duty to see that all transfers of shares are properly made either by the stockholders themselves or persons having authority from them. If, upon the presentation of a certificate for transfer, they are at all doubtful of the identity of the party offering it as its owner, or if not satisfied of the genuineness of a power of attorney produced, they can require the party in the one case and the genuineness of the document in the other, to be satisfactorily established before allowing the transfer to be made. In either case they must act upon their own responsibility. In many instances they may be misled without any fault of their own, just as the most careful person may sometimes be induced to purchase property from one who has no title and who may perhaps have acquired its possession by force or larceny. Neither the absence of blame on the part of the officers of the company in allowing unauthorized transfer of stock nor the good faith of the purchaser of stolen

property will avail as an answer to the demand of the true owner."

(Supreme Court of Mass.:—Crocker vs. Old Colony R. R. Co. 137 Mass. 417).

"When a transfer of stock is presented to a corporation it is bound at its own peril to see that it is a genuine transfer by one who has power of disposition over the stock . . . If it issues a certificate upon a forged or unauthorized transfer the real owner retains his property in the stock and the corporation may be liable to a bona fide holder of the new certificate."

On the other hand, "If a proper transfer is presented to a corporation, it is its duty to issue a new certificate in accordance with it, and if it refuses it is liable to the person to whom the transfer is made."

Summing up the responsibilities, "For all loss occasioned whether by fraud, negligence or unavoidable mistake by it or its agents—in the transfer of its stock, such corporation is absolutely liable, and no excuse can mitigate its liability."

Special risks are involved in the transfer of stock at the instance of executors, administrators, trustees or guardians.

(a)\* In one case stock held in trust under

\* Legal decisions also a, b, c and d quoted from Herrick's "Organization, Growth and Management of Trust Companies."

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## *The Fidelity Trust Company of Buffalo*

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Transfer  
Agent  
Responsibilities Involved  
in Transfer of  
Corporate  
Stock

a Will was ordered distributed by a lower court and the corporation so distributing it was afterwards held liable by the Supreme Court of Tennessee notwithstanding the instructions of the lower court, on the ground that the distribution was not in accordance with the terms of the Will, of which the corporation had, or ought to have had notice.

(b) Trustees under a Will transferred stock in excess of their authority and used the proceeds for their own benefit, and the corporation permitting the transfer of its stock was held chargeable with the knowledge of the contents of the Will which was spread on the public records, and was required to make good to the trust estate the value of the stock.

(c) Executors of a Will transferred stock to themselves as trustees and afterwards to a successor trustee, the latter selling the stock and using the proceeds for his own purposes. In an action to recover, the Court of Appeals of Maryland answered the plea of the defendant corporation, that the mere word "Trustee" gave them no notice of the trust, by holding that having been once informed of the Will and its provisions affecting the stock in question, that knowledge continued, and the company was

bound to see that the trust property in its custody was protected and not misappropriated; and required it to make good the loss.

(d) In another case a transfer on the order of an executor caused loss to a corporation because the executor had not complied with the law of the testator's domicile before selling the stock so transferred. If stock is transferred to a trustee, executor, administrator or guardian in an investment of trust funds, the corporation permitting such transfer of its stock may be held liable in case such investment of trust funds is prohibited by law.

Frequently stock may be sold by a trustee who holds it under a collateral trust agreement to secure an issue of bonds. It then becomes the duty of the transfer agent to examine the trust agreement and ascertain whether the trustee actually has authority to dispose of the stock by power of sale, exchange, or otherwise; and if so to see that all formalities have been properly complied with before the transfer is made.

Stock certificates are constantly being raised by various confidence men. Special cases have recently come to our notice where certificates of small amounts have

Transfer  
Agent  
Responsibilities  
Involved  
in Transfer of  
Corporate  
Stock

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## *The Fidelity Trust Company of Buffalo*

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**Transfer  
Agent  
Responsibilities  
Involved  
in Transfer of  
Corporate  
Stock**

been raised by men who were artists in penmanship. The sums involved were so small that one would scarcely credit such a job to men as clever as they. We were able instantly to detect the fraud by comparing the stock certificates with our records, and the manipulators were promptly brought to justice.

### PROBLEMS THAT MAY CONFRONT A CORPORATION IN THE TRANSFER OF ITS STOCK

**Transfer  
Agent  
Problems in  
Connection  
with Stock  
Transfers**

(1) An individual owning stock had it registered on the books of record in another name promising presently to send in the original certificates. He never made delivery of the certificate representing the shares of stock. Later he sold the certificate of stock for value and made full and complete assignment thereof to a third party. The said third party requested transfer of the shares into his name, but the transfer agent refused. What was the basis of the action? By what procedure could the third party recover?

(2) An individual who owned stock in a corporation lost the certificates. He requested that new ones be issued to him. Should new certificates be issued? Would



any responsibility attach thereto? What papers or other proofs should be required under the circumstances?

Transfer  
Agent  
*Problems in  
Connection  
with Stock  
Transfers*

(3) An individual lost certain stock certificates and new ones had been issued to him. His name was registered on the books of record as owner of the shares. A few months later another person presented the stock for transfer. The “lost certificates” had been endorsed by the original owner. He, however, claimed that the certificates had been endorsed in blank; and he further stated that he did not know the individual who presented the certificates for transfer. The individual who presented the certificates claimed that they were purchased from the original owner for value. He identified himself to the entire satisfaction of the officers of the corporation, who also recognized and identified the endorsement as the signature of the original owner. Two sets of certificates were at that time outstanding covering the same stock. Who was the actual owner of the stock in question? Which claim should be recognized? If the evidence at hand was insufficient to prove actual ownership, what proceedings should be followed in order to establish it?

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## *The Fidelity Trust Company of Buffalo*

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Transfer  
Agent  
Problems in  
Connection  
with Stock  
Transfers

(4) An individual had endorsed certificates in blank to obtain a loan. The loan was ultimately paid and the owner of the certificates placed them in his safe. His office was burglarized and among other items the certificates were stolen. An innocent third party purchased the certificates for full value, having no notice that they had been stolen. He presented them for transfer into his name. In the meantime an order from the original owner to stop transfer had been received by the corporation. When presented by the third party transfer was refused. The original owner did not deny his endorsement and the signature of the witness was satisfactorily identified. Was the action on the part of the transfer agent proper? What were the respective rights of the two parties interested? What was the proper procedure under the circumstances?

(5) Stock certificates standing in the name of an individual as agent were presented for transfer into his individual name. There was no question as to the identity of the signature of either agent or witness. Should such a transfer be permitted? Would any proofs or other authority be required?

(6) Stock certificates were stolen. No stop transfer order from the owner had been

received by the corporation. The signature of the owner was cleverly forged, and the corporation when requested to do so made the transfer. Later the owner demanded new certificates. His name did not then appear on the books of record as the owner of the shares. What were the respective rights of the interested parties? Who should properly assume the loss involved?

(7) A certificate is issued to "John or Mary Smith." Should the corporation permit a transfer on the endorsement of one of the designated owners? Is there any difference between a certificate so issued and one issued to "John and Mary Smith?"

(8) Suppose a certificate had been properly endorsed and dated; let us assume that it was accompanied by a detached power of attorney which bore a date very much prior to that of the assignment on the certificate. Should the individual named in the power of attorney be permitted to make the transfer on the books of record? Would the assignment be valid?

(9) A certificate issued in the name of "H. S. Jones" is endorsed in the name of "Harvey S. Jones." Is this a valid endorsement?

(10) A certificate was issued in the name

of John Welch. This name was erased, and that of Thomas Jergens substituted. Would a certificate of such appearance be acceptable if the endorsement and assignment by Thomas Jergens were in every way regular?

(11) An executor has certain stock certificates endorsed to himself individually and requests transfer of stock into his name. Is the transfer in order? What proofs, if any, should be required?

(12) At a private sale of securities an executor purchased stock belonging to the estate and asked that the certificates be transferred to his name. Is such a transfer in order? Is there any difference between the title of stock so secured by an executor of an estate and that obtained at a public sale of such securities? Are any proofs necessary in either instance?

(13) An individual died leaving as part of his estate shares of stock in a certain corporation which consisted of the consolidation of several corporations some of which were organized under the laws of several different States. The administrator of the estate sold the stock to convert it into cash in order to make final distribution. Would a waiver from the comptroller of the State of the decedent's residence be sufficient, or

would waivers be required from the several States involved before making the transfer of the stock in question? What other proofs would be necessary before effecting a transfer of stock under such circumstances?

Transfer  
Agent  
Problems in  
Connection  
with Stock  
Transfers

(14) A trustee received as part of a trust estate stock which was not legal for trust investments. The stock was specifically bequeathed to remaindermen after the death of the life tenant. By the terms of the Will the trustee was required to invest in legal securities. The trustee sold the stock and the purchaser asked that the stock be transferred to his name. The corporation refused to make the transfer. Was its stand well taken? What was the basis of its action?

(15) A trustee purchased from the trust estate for his own account stock considerably under its market value. The corporation was entirely familiar with the entire proceeding. Should it have made a transfer of the stock into his individual name when requested by him to do so?

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The foregoing problems are fair examples of the more common circumstances that

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## *The Fidelity Trust Company of Buffalo*

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Stock-  
holders'  
Rights  
Must Be  
Protected

arise in connection with the transfer of stock. Of course there will be situations of a more complex nature that require special study and attention, but in each case the corporation concerned is bound to see that the actual owners' rights are recognized and properly protected. It is, therefore, easy to realize that the transfer of corporate stock requires a thorough knowledge of corporation laws in the several States, constant study, and attention to new regulations in connection with corporation, income and inheritance tax laws, both Federal and State. Furthermore a careful examination and scrutiny of every certificate presented is necessary in order to detect any element that might prejudice stockholders' rights or interests.

Can an officer of the average corporation afford to devote sufficient time and study to this particular class of work regardless of whether or not the number of transfers be large or small? Could his time not be employed with greater profit to the corporation if his efforts were directed in different channels?

The trust company which specializes in corporate work of this character has equipment far superior to that of any corporation

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*“In Witness Whereof”*

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which attempts to handle this business itself.

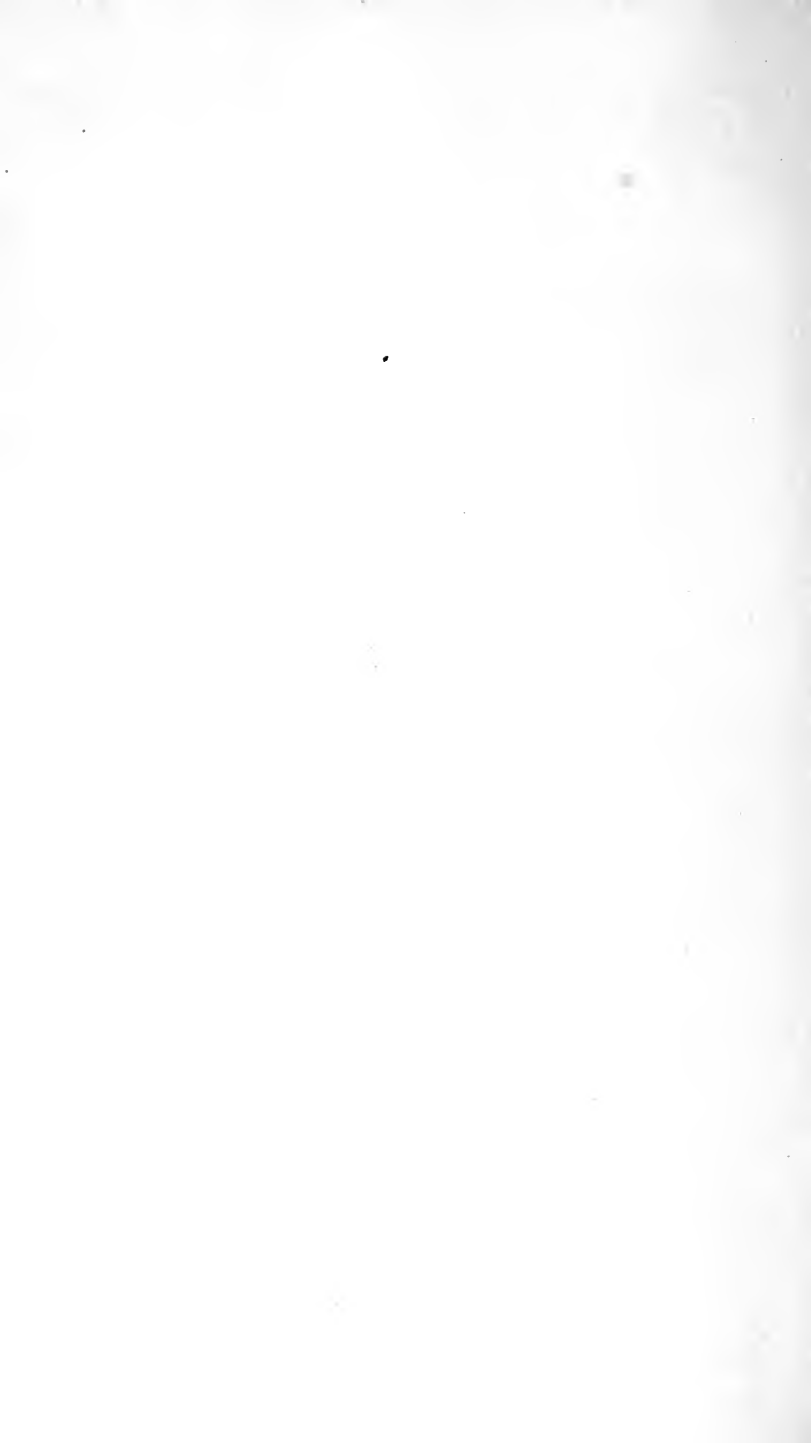
The responsibilities assumed by corporations in the transfer of stock apply also to the transfer of voting trust certificates, trustee certificates, registered bonds and certificates of deposit.

Stock-  
holders'  
Rights  
Must Be  
Protected





**REGISTRAR**





## REGISTRAR

A FEW years ago, speculation seemed the Registrar order of the day in some railroad and industrial corporations. The authorized capital stock was in some instances over-issued, with consequent losses to innocent purchasers who bought the unauthorized shares of stock.

To prevent a repetition of such fraud, the corporate registrar was established. Where a transfer agent and a registrar are used in connection with the transfer of capital stock, the certificate is not valid unless it is countersigned by the registrar. When presented to the registrar for its counter-signature, the certificate is carefully scrutinized to see that the certificate is genuine. This, of course, contemplates an examination of the signatures of the president, secretary and transfer agent to be sure that none have been forged. If the certificate is of an original issue it is registered when countersigned by the registrar.

When the entire authorized capital stock has been issued and a certificate is presented by the transfer agent to be recorded in another name, the registrar investigates its

**Registrar**

records to ascertain whether the cancelled certificate is the same as that which was originally issued, and examines the signatures of the corporate officers and that of the transfer agent, as well as the seal of the company, with a view to detecting any irregularities. If the number of shares in the new certificate, or certificates, checks up properly with the cancelled certificate, and if the transfer appears to be genuine in every respect, the name of the new owner of the transferred shares is registered in the books of record. The registrar then cancels the old certificates and affixes its signature to the new ones, thereby making the transfer complete.

In certifying that the certificate is genuine and that it is one of the duly authorized issue the registrar safeguards not only the interests of the corporation but those of the owner and the prospective purchaser of stock as well.

The public is beginning to realize the value of countersignatures of a transfer agent and a registrar, and usually looks for them on a certificate that is purchased. If neither signature appears some individuals are inclined to doubt the standing of the corporation. For this reason the trust company,

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*“In Witness Whereof”*

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which values its reputation, makes a very careful investigation of the corporation seeking its service as registrar or transfer agent. This is done in order to ascertain whether the corporation is one organized to engage seriously and actively in the business as set forth in its articles of incorporation, and whether the officers are reliable business men of good standing. Registrar

Corporations contemplating an issue of capital stock of any nature will do well to investigate and weigh the advantages to be gained by having a trust company act as registrar for their corporate stock.



**FISCAL AGENT  
UNDER MUNICIPAL  
BOND ISSUE**







## FISCAL AGENT UNDER MUNICIPAL BOND ISSUE

**I**N investment circles a secured obligation is ordinarily known as a bond. It is, in other words, an interest-bearing obligation issued by a government, municipality or corporation, in which there is a promise to pay a fixed amount to the holder at a specified time.

Fiscal  
Agent  
Under  
Municipal  
Bond Issue

The most important consideration in an issue of municipal bonds is that of validity. Unlike an issue of industrial bonds, there is ordinarily no question as to the value of assets that may be levied upon. It is a question as to *how* those assets may be made available, to which, of course, the answer is taxation. To protect municipalities from the dangers that beset unrestricted taxation, unrestrained contraction of debts, etc., various State legislatures have passed statutes establishing certain tax and debt limits upon municipalities, districts, and quasi corporations of a public nature. Therefore bonds issued by a municipality in violation of statutory limitation may later be repudiated.

Usually municipal bonds have been

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## *The Fidelity Trust Company of Buffalo*

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Fiscal  
Agent  
Under  
Municipal  
Bond Issue

invalidated in the past for one of the following reasons, (1) defects in authority of issue, (2) purpose of issue, (3) process of issue, (4) violation of debt and tax restrictions.

Authority to issue municipal bonds may be said to rest in constitutions or statutes. Approval by a majority vote of the tax payers affected is frequently required. Of course it is sometimes possible to validate an issue of bonds by special legislation where no authority appears to exist. Therefore it is necessary to study statutes, constitutions or other special legislation in order to detect any element that may affect the authority of the issue.

Having been satisfied that the authority exists it is then important to investigate the *process* by which such authority may be translated into the actual issue. If a popular vote is required, has every requirement of the election been observed? Has there been any irregularity in connection with the advertisement for bids? Does the rate of interest offered exceed the limit permitted by statute? Have the rate of interest and maturity date been specified in the advertisement? These and many similar questions arise in connection with the process of issue.

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*“In Witness Whereof”*

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What is the *purpose* of the issue? Municipalities may contract obligations for public purposes, not private. It is quite usual to see an issue of municipal bonds having for its purpose the construction or extension of sewers, streets, bridges, waterworks, school buildings, municipal buildings and public works generally. Of course bonds are also issued for many public purposes other than those mentioned above, and for such issues validity from the standpoint of purpose is of special importance.

Fiscal  
Agent  
Under  
Municipal  
Bond Issue

Some of our States have very specific statutes on the subject of debt restrictions. Quoting Chamberlain, “the Constitution of Indiana says, all bonds or obligations in excess of such amount (permitted by law, namely, two per cent of the assessment) shall be void.” Many other States have similar statutes limiting obligations that may be contracted by municipalities to a certain percentage of the assessed property valuation subject to tax.

When irregularities of the nature above recited occur, it is the duty of municipalities to invalidate such obligations in obedience to statutory requirements.

The opinion of the bond attorney is, therefore, of paramount importance to the

bondholder, since obviously his security in a municipal bond depends upon the validity of the issue. The bond attorney likewise performs a service for the tax payer, because his thorough search may prevent a levy of taxes to meet interest or principal payments on an invalid issue of bonds.

Assuming that all legal requirements precedent to the issue have been met it is necessary to see that the bond itself is legal in every way, i. e., that the seal is affixed, that it is signed by the mayor, treasurer, city clerk, supervisor, or other proper officials, etc. Care must also be taken to prevent counterfeiting, overissue and possible fraud in connection with the bonds.

The following quotation has been taken from Chamberlain's excellent treatise, "Principles of Bond Investment".

"Invalidity as affected by the authority, purpose or process of issue, or by the violation of debt or tax restrictions, is almost always accidental. There is seldom any deliberate irregularity on the part of the municipality, except in the petty matter of awarding loans. Criminality on the part of outsiders, however, is by no means obsolete. In recent years the forgery and successful hypothecation of municipal bonds by two

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*“In Witness Whereof”*

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men, alone, has amounted to \$1,600,000.00. Therefore, to safeguard the community and the investor against forgery and overissue there has arisen in the past decade the custom of placing the supervision of new municipal issues in the hands of trust companies. Following the regulations of the leading stock exchanges the trust companies furnish steel engraving of highest quality and sometimes special paper. Upon each bond is placed their countersignature. Often before the issue is offered to bankers or the public, bond attorneys acting for the trust company pass upon its legality. In these ways every precaution is taken against invalidity, and possible loss except through municipal bankruptcy is reduced to a minimum.”

Fiscal  
Agent  
Under  
Municipal  
Bond Issue

Since the administration of a municipality is subject to frequent change, and also due to the fact that many office holders are unfamiliar with modern financial methods and requirements, the municipality selects a trust company to act as its disbursing or fiscal agent in the payment of interest on bonds and to redeem the issue at maturity. This relieves the administration of considerable detail and at the same time assures bondholders that their interests will receive

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## *The Fidelity Trust Company of Buffalo*

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Fiscal  
Agent  
Under  
Municipal  
Bond Issue

prompt attention at all times. The trust company will also act as registrar for those holders who desire bonds registered in their individual names. The broad experience of a trust company enables it to make prompt decisions as to the proper procedure in connection with the transfer of title to registered bonds.

**TRUSTEE  
UNDER CORPORATE  
BOND ISSUE**







## TRUSTEE UNDER CORPORATE BOND ISSUE

**B**ANKS prefer loans of a self liquidating character, i. e., loans whose date of maturity is definite, and which are more or less of short duration. By this means, the bank's resources are kept in a liquid condition to meet any sudden or unusual demands by its depositors.

Trustee  
Under  
Corporate  
Bond Issue

Short term loans are usually made to finance commercial transactions, being paid by the corporation when collection is made from its customer.

A corporation may contemplate an expansion of its manufacturing or warehouse facilities. Unless the necessary capital has been accumulated, the corporation may require a loan to finance the project. Obviously a loan of short duration under these circumstances would work a hardship on the corporation unless there was in immediate prospect some unusually large return whereby the note could be met at maturity. The ideal loan from the corporation's standpoint would be one whereby the obligation matured at some future date, say five or ten years, or even more remotely if the amount

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Under  
Corporate  
Bond Issue

involved was considerable. This would allow the corporation to set aside annually from its profits a certain sum with which to liquidate the obligation when due or to make arrangements for its refunding, and at the same time would in no way impair the working capital of the corporation. Such financing would be considered an investment loan. Therefore the corporation would naturally seek an individual or institution having surplus funds for long term investment.

When a loan is made the security will be lodged with the individual or institution advancing the funds. If, however, the amount desired is of considerable magnitude, it might be utterly impossible to obtain a loan from any one individual or institution. It might become necessary to appeal to hundreds or even thousands of investors, and to meet the various circumstances of each, the loan might be separated into units or denominations of five hundred and one thousand dollars each. Naturally each investor will want security for his individual loan or investment. If thousands of investors were required to supply the necessary funds, and security in the form of a mortgage were offered, it is evident

that the property could not be divided into thousands of units and a separate mortgage issued to each investor. The cost would be prohibitive and the scheme physically impossible, since one of the mortgaged units alone would be of little value, if detached from the property as a whole.

Trustee  
Under  
Corporate  
Bond Issue

To meet such a situation one mortgage covering the entire property is given to a trustee who represents the interests of all concerned. Such an indenture is ordinarily known as a Mortgage Deed of Trust.

It is said that corporation bonds secured by Mortgage Deeds of Trust came into being with the advent of steam railroads nearly a century ago.

Deeds of Trust are very similar in nature and in general may be said to be constructed in substantially the following manner: fee or title to the property is vested in the trustee; grantor retains possession thereof until default; grantor through its fiscal agent pays coupons when due; grantor agrees to retire a certain number of bonds annually or build up sinking fund to retire issue at maturity; upon substitution of satisfactory property trustee may release a portion of mortgaged property for sale by grantor; grantor must pay all taxes and

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Under  
Corporate  
Bond Issue

liens, as well as keep property in repair; grantor must keep property properly insured; grantor may agree to pay a certain percentage of normal income taxes; principal may be declared due upon default in interest either upon initiative of trustee or by certain proportion of bondholders; definition of duties and responsibilities of trustee; provision for appointment of new trustee in event of removal or resignation of trustee named in the indenture; certification of bonds, registration of bonds; compensation of trustee.

The above is the frame ordinarily used in a Deed of Trust, however, various issues proposed will naturally be attended by circumstances peculiar to each and special consideration will be required.

When a Mortgage Deed of Trust has been accepted, a "trust" in fact and in law as well as in name is created for the protection of bondholders. It is highly important, therefore, to select a responsible, reliable and thoroughly competent trustee to discharge the duties outlined in the indenture.

Many years ago it was the usual practice to name individuals as trustees to protect the interests of investors. Individuals acting in such capacities were, however,

subject to the frailties and uncertainties of human existence. Since the development of trust companies with their obvious advantages over individuals in such capacity, this business has been entrusted to them. Because of the peculiar nature and special conditions involved, the appointment as trustee under a bond issue is one of the most important that a trust company can accept.

The corporation mortgage is explicit in its terms and usually limits the liability of the trustee to the exercise of good faith and due diligence. However, no trust company can afford to lend its reputation and endorsement to a transaction of this nature by becoming a trustee if there is any question concerning the regularity of the transaction or the good faith of all parties concerned.

Bonds in the form specified in the trust indenture are usually engraved. It frequently becomes necessary to issue interim or temporary certificates because of delay occasioned in the engraving of definitive or permanent bonds. On such occasions the interim certificates must be cancelled and permanent ones issued. Before the definitive bonds are issued or delivered, each is sealed and attested by the officers of the

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Under  
Corporate  
Bond Issue

corporation who deliver them to the trust company. The trustee then proceeds to examine each as to its phraseology, form, etc. If correct in every way, the trustee certifies each bond substantially as follows:

“It is hereby certified that this bond is one of the series mentioned in the Trust Agreement referred to within.

Dated\_\_\_\_\_Buffalo, N. Y.

\_\_\_\_\_Trust Company, Trustee.

By\_\_\_\_\_Secretary.”

When certified the trustee makes delivery of the bonds in accordance with the terms of the Trust Agreement.

In the payment of coupons great care must be taken to see that cancelled coupons are properly filed. It is also essential to exercise caution to prevent the payment of coupons detached from such bonds as may have been called for redemption. It sometimes happens that calls are advertised in one or two obscure newspapers and the holder may never see the notice. Trust companies have been able to relieve corporations of a great amount of detail by acting as the corporation's paying or disbursing agent. This subject is more fully discussed in another chapter.

Retirement of bonds is provided for in various ways. They may be redeemed or called, wholly or in part, on interest dates by drawn numbers, at par or at a premium. By the terms of a mortgage a sinking fund may be required whereby the corporation deposits a certain sum at stated periods with the trustee. A sinking fund may be used to retire the bonds gradually or to meet the obligation in full at maturity. This may be accomplished either by redemption or by purchase in the open market.

Trustee  
Under  
Corporate  
Bond Issue

When bonds are redeemed prior to maturity they may be filed away until the issue becomes due. At maturity the mortgage is cancelled by the trustee upon the payment of principal and interest by the corporation, and the bonds are then cancelled and burned. After the bonds have been destroyed a cremation certificate is issued by the trustee, and the transaction is closed.

The above discussion suggests in a general way the many duties that may be performed by a trust company when acting as trustee under an issue of corporate bonds. Under separate headings on the following pages an effort has been made to sketch

briefly some of the more distinct types of bonds issued by corporations.

CORPORATION BONDS SECURED BY  
MORTGAGES ON REAL PROPERTY

Trustee  
Mortgage  
Bonds

When it is proposed to issue bonds secured by a mortgage on real property, the consent of a majority of directors and of holders of two-thirds of the stock must be obtained to make the mortgage valid. Consent of the stockholders may be either in writing or by vote at a special meeting called for that purpose upon the same conditions of notice as that required for the annual meeting of stockholders. A certificate under seal by the corporation, signed by the president or vice-president and the secretary or assistant secretary, must be filed and recorded in the office of the clerk of the county wherein the corporation has its principal office. The certificate will set forth the fact that such consent either in writing or by vote of two-thirds of the stockholders has been obtained.

So long as the corporation complies with the terms of the mortgage, it is permitted to retain physical control of the property covered by the mortgage. If, however, there should be any default in the interest,



principal or both, the trustee may take steps to safeguard the interests of all concerned. This may require foreclosure of the mortgage and sale of the property.

Trustee  
Mortgage  
Bonds

Under the terms of a mortgage the authority, duties and rights of the trustee are defined and clearly set forth. These, of course, must be observed and faithfully discharged. The mortgage will also describe the real estate concerned and give all particulars regarding the property.

While the trustee is usually relieved from liability except in the case of gross negligence or willful malfeasance, yet the trust company, before accepting a corporate mortgage trust, carefully investigates all essential features of the transaction. Counsel will be sought to verify the legality of the mortgage. An inquiry is usually made to ascertain whether the documents are in proper form, whether the purpose is lawful, and whether all requirements of the State in which the property is located have been complied with.

When preliminary investigations have been completed the mortgage may be executed and the acceptance of the trust may be formally made by the trustee, after which the mortgage is recorded in the county wherein the property is located.

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Mortgage  
Bonds

Frequently the delivery of bonds is contingent upon specific conditions to be fulfilled by the corporation. It may be stipulated that the entire issue is to be certified and delivered by the trustee as soon as the mortgage is recorded; or a proportion may be delivered subject to the completion of certain construction work on the mortgaged property. A general and refunding mortgage may be issued whereby provision is made for the retirement of an underlying issue when it matures. Under the terms of the mortgage it is frequently stipulated that property acquired subsequent to the delivery of bonds shall be subject to the lien of the mortgage; or it may be provided that property subject to the mortgage may be released and other security substituted.

### EQUIPMENT TRUST BONDS

Trustee  
Equipment  
Trust Bonds

It has been said that the general idea of car trusts was suggested by conditional sales of boats to freight operators or contractors in about the year 1830.

Nearly forty years later certain railroads having already issued bonds secured by mortgages on their property were confronted with the necessity of purchasing new rolling stock, not only for replacement

but also to meet the requirements of increasing traffic. Many issues of bonds contained "after acquired property" clauses by virtue of which all property acquired subsequent to the execution of the mortgage became subject to the lien thereof.

Not being in a position to pay cash for the new equipment, the railroad was in a dilemma. Manufacturers of equipment would not sell property which became subject to a lien immediately upon delivery to the railroad company, except for cash. Conflicting judicial opinions were expressed concerning the legality of conditional sales in various States. Some held that "after acquired" clauses in mortgages subjected to the lien thereof only the equity which railroads actually possessed in the equipment. Others held that rolling stock is movable and, therefore, personal property; that possession presumed ownership; hence such property became subject to "after acquired" clauses of said mortgages unless the same be covered by a chattel mortgage properly recorded.

Rolling stock is moved from one State to another, and therefore security in the form of a chattel mortgage would be impracticable because of the expense involved by

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Equipment  
Trust Bonds

manifold registrations. At that early date conditional sales did not seem to offer a convenient means of protection, therefore manufacturers could not adopt the policy followed by certain boat makers above referred to.

Contracts of lease, however, were recognized by numerous States, so manufacturers of railroad equipment turned to this device as a more practicable solution of the problem. This was the inception of car trusts.

At first there were formed, separate and distinct from the railroad company, associations which purchased and owned rolling stock. Such associations leased the equipment to railroad companies which in addition to paying an annual rental assumed the expense and responsibility of insurance, taxes, upkeep, etc. The amount received as rent was such that the price of equipment plus a fair income return on the investment was returned to the leasing association within a definite period, say ten years or less, after which title was passed to the railroad company. Investors who participated in these associations became shareholders in the association. The capital of such leasing companies did not exceed the cost of equipment under contract.

Philadelphia was foremost in the formation of these associations and in the issue of car trust bonds; therefore the lease principle has become popularly known as the "Philadelphia Plan." Car trust certificates differ somewhat from car trust bonds, in that the former are shares in a leasing corporation, while the latter are direct obligations of the issuing corporation or association, secured by the deposit of a contract of lease which, of course, is held by a trustee.

Section 61 of the Personal Property Laws of New York provides that a contract of conditional sale or a lease of locomotives or rolling stock shall be valid as against third parties if the contract or lease be recorded in the county within which is located the principal office of the vendee or lessee, and if the locomotive or rolling stock bears a plate on each side thereof, indicating that the vendor or lessor retains ownership of the property.

A considerable proportion of the various States have enacted similar statutes thereby greatly simplifying the issue of equipment bonds under the conditional sale plan.

In an issue of this nature the contract is usually assigned to a trustee who holds

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Equipment  
Trust Bonds

title to the equipment until all payments have been made, whereupon title is passed by delivery of a bill of sale to the vendee.

Equipment bonds may be issued to finance the purchase of steam and electric locomotives; box, coal and tank cars; street and interurban cars, etc.

Trust indentures specify in detail the conditions to be observed by all parties thereto, the following being some of the provisions usually recognized; names of all parties to the trust (the vendor, vendee and the trust company); terms of sale or lease; assignment of lease to trustee; provision for replacement of equipment lost, worn out or destroyed, and a report on condition of equipment at least annually; passing of title to vendee upon fulfillment of contract of lease by bill of sale; copy of bonds and coupons to be issued; terms and conditions of certification by trustee; provisions for issue of interim certificates if necessary; application of rental payments toward satisfaction of dividend warrants or interest coupons and retirement of bonds; specifications as to payment of taxes, insurance, etc.; relief in case of default; specifications as to attachment of plates; recording of contract of lease, etc.;

compensation, duties and responsibilities of trustee.

## COLLATERAL TRUST BONDS

In the event that additional capital is required, a corporation may provide for such financial requirements by an issue of bonds secured by certain securities deposited with a trust company which holds them for the protection of bondholders. Such securities may consist of unissued bonds of the company which are held in the treasury, bonds of subsidiary companies over which the corporation holds control, or securities which the corporation may have purchased for its investment account.

Trustee  
Collateral  
Trust Bonds

Bonds based on such security are known as Collateral Trust Bonds. Securities so held or deposited usually consist of stocks or bonds whose market value provides a satisfactory margin of safety over the amount of Collateral Trust Bonds issued thereon. The value of such bonds depends not alone upon the securities deposited, but also upon the financial and business standing of the issuing corporation.

Upon instructions from the company, the trustee may collect interest or dividends due on securities deposited as collateral,

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Collateral  
Trust Bonds

and collect maturing or called bonds in addition to its duty as custodian of the securities. Title thereto is vested in the trustee, who is provided with powers of attorney so that the deposited securities may be transferred if necessary. It is frequently provided that pieces of collateral may be released for sale or redemption upon substitution of satisfactory securities or other property of like value, or upon the retirement of an equitable proportion of bonds outstanding.

Particular care should be given to the proper drafting of a trust agreement for therein may rest to a considerable degree the safety and protection of the bondholders' investment. The trust indenture usually contains the names of parties thereto (the issuing corporation and trust company which acts as trustee); amount, denomination and term of the issue; specimen form of the proposed bond, coupon and trustee's certificate; schedule listing and describing securities deposited as collateral; certificate by officers of corporation to effect that all formalities of law incident to legality of the issue have been complied with; assignment of collateral to trustee; terms and conditions incident



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*“In Witness Whereof”*

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to certification and delivery of bonds by trustee upon corporation's order; provision for issue of interim or temporary certificates if necessary; provisions for registration of bonds; specifications as to care, release and substitution of collateral or retirement of bonds in event of sale of collateral released; sinking fund and redemption provisions; terms and conditions of relief in event of default in interest, sinking fund or principal payments; definition of duties and responsibilities of trustee; provision for resignation of trustee and appointment of successor; compensation of trustee; proper execution by parties thereto.

Trustee  
Collateral  
Trust Bonds

## DEBENTURE BONDS

This caption is applied to the class of bonds which is a general obligation of the issuing corporation not secured by a pledge or lien on specific property. Such bonds are promissory notes and have for their security the financial strength and credit standing of the corporation thus obligated. The trust agreement must, of course, be properly constructed in order to offer the necessary protection to bondholders.

Trustee  
Debenture  
Bonds

Debenture bonds may be issued for

various reasons. Perhaps tangible properties are already subject to liens which prevent further obligations of that nature, or if permitted, which would make subsequent issues junior in standing with but little more security than a general obligation of the company. In a commercial transaction of considerable magnitude requiring a large sum of money for say three to five years, a corporation might find it less expensive to issue debenture bonds.

Realizing that this type of bond is ordinarily not so popular with investors as one secured by a lien on specific property, corporations endeavor in various ways to make them attractive. To strengthen the security of debenture bonds it may be stipulated that no further funded indebtedness will be permitted without equally securing debentures thereunder, no dividends to be paid until after interest on bonds has been satisfied, a certain proportion of bonds to be retired annually. To appeal further to investors such bonds may contain certain provisions for maintenance of a minimum ratio between current assets and current liabilities, may assure attractive income return, and may be convertible into stock of the corporation.

When such an issue is used to expand the facilities of the corporation, the security is enhanced by the greater value of the property as a whole, as well as by possible increased earning power. The purpose of an issue of debenture bonds would, therefore, seem to be of importance from the bondholders' standpoint.

In convertible debenture bonds the conversion privilege is exercised by depositing bonds with the trustee, who is usually required to make proper adjustments as to accrued interest and dividends when the exchange is effected. In bonds of this nature the trustee's duty lies not in the care and custody of property, but rather as a vehicle to facilitate the issue and to provide a convenient means for concerted action on the part of bondholders, in addition to its other duties.

The trust agreement is of particular importance in securities of this nature and it is impossible to lay too much emphasis on the necessity of careful consideration of all details when the indenture is being constructed. Some of the points to be considered are: the amount, period of duration and denomination of the issue; interest return; form of bonds and coupons;

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## *The Fidelity Trust Company of Buffalo*

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Trustee  
Debenture  
Bonds

certification and delivery of bonds by trustee; provisions for issue of interim certificates if necessary; tax exemption features if any; sinking fund provisions if any; registration privilege; certificate by president and secretary or other responsible officers of corporation to the effect that all steps have been taken to make the issue a legal obligation of the corporation; provisions as to future obligations of company, funded or otherwise; duties and responsibilities of trustee; payment of taxes, insurance and upkeep of property by corporation; terms and conditions of redemption; remedy in case of default; provisions for appointment of successor in event that trustee resigns; compensation of trustee.

**SAFE KEEPING AGENT**





## SAFE KEEPING AGENT

SOMETIMES in the case of a corporation which has accumulated liquid reserves for specific purposes securities may have been purchased and locked up in a safe deposit box. Subsequently certain of the securities may have been called for redemption, and interest is lost because the bonds have not been promptly redeemed; or loss may be occasioned if coupons have become due and have not been clipped and presented for payment. It frequently happens that negotiable notes or other documents may be located in the box, and one or more of them may have matured in the absence of responsible officers. Possibly maturing notes have not been presented for payment when due, and the corporation may suffer considerable loss as a result.

Safe  
Keeping  
Agent

A surplus fund may be invested in securities worth hundreds of thousands of dollars, and yet the company may not feel justified in the outlay necessary to obtain comprehensive and reliable financial services from one or more of the many excellent statistical bureaus. How much less then would an organization having a smaller surplus

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## *The Fidelity Trust Company of Buffalo*

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Safe  
Keeping  
Agent

account be able to afford such an outlay! Yet it is of the utmost importance to safeguard this investment.

Trust companies have developed a service of far reaching importance to corporations whose surplus, reserve, or profit and loss account is invested in securities. The service is known as "Safe Keeping Service." When securities are lodged in this department the trust company gives its receipt for them and assumes the responsibility for their physical safety. Ownership certificates are signed, coupons are collected by the trust company when due, and the amount collected is credited to the corporation's account. At the same time notice to that effect is mailed to the corporation. Notes are presented for payment on the date they mature. Mortgage interest is collected promptly when due. If a surplus account should be composed of stock, the dividends are collected. In the case of default, an inquiry is made to ascertain the cause, and this information is promptly communicated to the corporation whose account is thus concerned.

In the case of stock rights the trust company will endeavor to notify the corporation of these facts, and will be prepared to carry



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*“In Witness Whereof”*

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out any instructions with respect to the rights in question.

Safe  
Keeping  
Agent

Any security in the safe keeping account may be sold upon the corporation's order. If the responsible officers of a corporation were abroad and decided to sell any of its securities, this could easily be accomplished by cabling the trust company in code an order to sell at the market price. Or securities could be bought in like manner by cabling an order to purchase at the market price. In the former case the sale would be executed and the corporation's account credited. In the latter case the purchase would be made and the account charged.

At least twice annually a review is made of every security in the account, and the corporation will receive a letter from the trust company apprising it of the condition of all securities in its account. If unusual information should be received concerning any security in the account, it is promptly communicated to the corporation.

It may be well to add that the well organized trust company receives virtually every financial journal, publication and service of importance, and is therefore in an excellent position to become acquainted with practically all investment information

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## *The Fidelity Trust Company of Buffalo*

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available. There is small likelihood that any called bond would escape the trust company's observation, while it might be comparatively easy for a notice to escape the attention of the average individual.

The treasurer of the average corporation can well afford to spend his time on other matters requiring his special supervision and delegate the care of his surplus account to a trust company where it will be

- (1) Instantly accessible at all times;
- (2) In hands responsible for its physical safety;
- (3) Under the observation of investment experts;
- (4) Safeguarded by an agent in close contact with practically every important financial journal and service;
- (5) Subject to prompt attention in connection with the collection of securities, dividends, interest and coupons;
- (6) In the care of a custodian who neither dies nor takes a vacation;
- (7) Free from all clerical work so far as the corporation is concerned.

**DEPOSITARY  
UNDER REORGANIZATION  
PLAN**





## DEPOSITARY UNDER REORGANIZATION PLAN

**W**HEN default of interest is made in connection with a mortgage on improved real estate of modest value, foreclosure proceedings are instituted and the property is sold. Theoretically, a mortgage on a residence is the same as that on the property of a huge industrial concern, a railroad or a public utility corporation. A residence, however, may be readily sold and the mortgage satisfied; while the value of a mortgage covering the real property and equipment of an industrial corporation, a railroad or public utility corporation, lies in the continued profitable operation of the company. Any disintegration of its essential elements would jeopardize the value of the property and consequently the obligation secured by it.

Therefore, in the event that default of interest or principal occurs, a Protective Committee may be formed which is composed of individuals or institutions who are largely interested in the defaulted bonds. The Protective Committee may decide upon a plan for continued operation, or in some cases upon a reorganization of the corporation.

Depository  
Under  
Reorganiza-  
tion Plan

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## *The Fidelity Trust Company of Buffalo*

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### Depository Under Reorganiza- tion Plan

The securities are lodged with a responsible depository, usually a trust company, which issues Certificates of Deposit in exchange for them. If the bonds have been listed, provisions may be made whereby the Certificates of Deposit are also listed on the Stock Exchange. The permanent certificates give a full description of the security deposited, and also specify the terms and conditions under which deposit was made, as well as the conditions attending issue of the Certificates of Deposit.

If it is proposed to continue the business every effort will be made to rehabilitate the corporation and increase its earnings to a point where fixed charges on the present or the proposed funded obligations are fully satisfied. When this object is accomplished the property will be turned back to the corporation. If assessments are made or if a distribution of principal or interest is contemplated, the certificates are presented so that proper endorsements may be made thereon. When the property has been restored to the corporation, Certificates of Deposit are recalled and the old securities reissued, or proposed new securities given in exchange therefor.

In the dissolution of a corporation the

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*“In Witness Whereof”*

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trust company may be of considerable service. Let us assume that a committee has been appointed to carry into effect a resolution to dissolve, and that a trust company has been appointed as depositary. As speedily as possible the committee will convert into cash all assets of the corporation, depositing the same with the trust company. The committee will give the trust company a list of all creditors of the corporation and the amount due each. When and as the deposits with the trust company reach a specified percentage of the claims, the trust company will ratably make distribution thereof to the creditors until all claims have been paid in full. When the claims of all creditors have been satisfied, deposits thereafter will be held for distribution to stockholders. Stock certificates may be deposited with the trust company in order that any ratable distribution of assets may be endorsed thereon. When the affairs of the corporation have been completely liquidated a certificate of dissolution will be filed with the proper authorities. The committee will thus be relieved of a great amount of clerical work, while creditors and stockholders will be assured that all distributions have been made on an equitable basis.

Depository  
Under  
Reorganiza-  
tion Plan

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## *The Fidelity Trust Company of Buffalo*

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### Depository Under Reorganiza- tion Plan

A similar service may be performed by a trust company in the disintegration by a large corporation of its assets into two or more smaller companies. In recent years certain large corporations in obedience to United States Supreme Court decrees or for other purposes have found it advisable to carry out such a program.

Certain corporations adopted plans substantially as follows. A committee was appointed to carry into effect the plans agreed upon. A trust company was appointed as depository. Notices were sent by the committee to stockholders advising them of the program agreed upon and directing all holders of common and preferred stock to deposit their securities, fully and properly endorsed, with the trust company or depository on or before a specified date. It was also explained that shares of common and preferred stock in the new corporations to be formed would be given in exchange for those deposited. The number of shares to be given in exchange was computed by the depository, and for all fractional parts of a share warrants were issued to stockholders. Such warrants could be cashed by the depository, or shares would be given in exchange for sufficient of



the warrants to equal the par value of shares thus exchanged. Similar arrangements were made with respect to the exchange of bonds. The depository made proper adjustment on account of accrued interest, where interest dates in the bonds deposited differed from those of bonds given in exchange therefor. This adjustment was paid in cash by the trust company. All redeemed stocks and bonds were cancelled by the depository and destroyed.

In the consolidation of two or more corporations we have a situation which is practically the antithesis of that above recited, in that securities of several corporations are deposited in exchange for those of a single corporation. The duties required of the depository, however, are virtually the same.

In some instances the depository has also performed many services for the committee in the nature of mailing notices and reports to stockholders, bondholders, etc. With its organization these duties can be discharged by the trust company with far less expense to the corporation. All duties of the depository as well as the terms and conditions incident thereto will be fully defined in the deposit agreement between the corporation and trust company.

TO THE  
ATTENTION

**DISBURSING AGENT**





## DISBURSING AGENT

UNTIL a few years ago it was the general practice for corporations to make out and mail individual dividend checks to the various stockholders. It was also their custom to pay coupons and interest, and to redeem bonds at maturity. The corporation which sent out individual dividend checks encountered numerous obstacles. It was difficult to maintain the correct addresses of individual stockholders. Dividends from certain stocks might be ordered paid to an individual not registered as owner of such stock on the books of record. Frequently stock which is active on the exchange is issued in what are called "street shares," i. e., in the name of a broker whose firm and official signatures are so well known that transfer of the shares is not required in every sale. If a broker buys such shares for the account of several customers he may hold only one of such certificates to cover several purchasers' accounts. If he should fail to credit one of his clients with interest or dividends when due the customer might write to the corporation and demand payment. This would necessitate an

Disbursing  
Agent

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## *The Fidelity Trust Company of Buffalo*

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Disbursing  
Agent

investigation. The corporation not accustomed to such circumstances would experience considerable difficulty in locating an error.

In making out dividend checks, corporations may neglect to take necessary precautions, and the checks may be raised or otherwise fraudulently tampered with. If individuals who check up dividend payments are not accustomed to the various methods of fraud employed by nefarious operators, a corporation may suffer considerable loss.

In the payment of coupons and in the redemption of called or matured bonds, the amount of clerical work involved is infinitely greater than that required for the payment of dividends. In undertaking work of this nature the corporation must see that all coupons presented are accompanied by the proper ownership certificates, filed by the owner of the security, as required by regulations of the Internal Revenue Bureau. Very frequently holders of bonds which are subject to call fail to see the published notice calling certain bonds for redemption. In such instances great care must be exercised to prevent the payment of coupons detached from such bonds. Frequently the

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*“In Witness Whereof”*

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return of the coupon is the first notice the holder may have that one of his bonds has been called. Occasionally interest on registered bonds is payable only on the order of the registered owner, and care must be used to see that an order directing the payment of interest has been received before payment is made.

Disbursing  
Agent

It can easily be understood that a considerable amount of clerical help is required to discharge the duties of a paying or disbursing agent. When one takes into account the knowledge, caution and diligence that must be exercised by such a department it can be observed that the ordinary clerk cannot qualify for such work. In addition to the skill required, a disbursing agent must have an accurate knowledge of various State and Federal Laws, particularly those which regulate Income Taxes.

A complete system of files and records is necessary in order to facilitate the work and at the same time protect the corporation's interests. Where a limited amount of this business is handled, proper care, diligence and talent are usually sacrificed, always of course, at the expense of the corporation concerned. To avoid routine and clerical help, and to safeguard themselves against

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*The Fidelity Trust Company of Buffalo*

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**Disbursing  
Agent**

loss through error, lack of knowledge and the absence of a proper system of records, corporations are assigning these duties to the trust department of a well organized trust company.



**VOTING TRUSTEE**





## VOTING TRUSTEE

**I**N the reorganization or consolidation of corporations it is frequently desirable that certain management be retained. To insure the continuation of a particular board of directors or managers, stockholders may enter into a Voting Trust Agreement whereby the stock is endorsed over to a trustee during the term of the agreement. When the stockholders surrender their certificates they receive beneficial certificates from the trustee whereby they are entitled to all benefits that may arise from the stock while the trust agreement is effective. Aside from the custody of the stock, the trustee's only duty under such an arrangement is the voting of stock deposited in accordance with the terms of the agreement. Such a trust agreement is confined to a period of five years in this State. When the trust agreement expires, stockholders surrender their trustee certificates for new certificates representing shares of stock in the corporation concerned.

Stockholders may also resort to a similar arrangement when their interests are jeopardized by an effort on the part of certain factions to gain control.

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## *The Fidelity Trust Company of Buffalo*

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### Voting Trustee

When a preferred stock or bond issue is about to be placed on the market an arrangement of a similar nature may be proposed, giving the holders of preferred stock or bonds the right to choose the management until dividends or interest have been regularly paid for a period of successive years, or giving the security holders the right to choose the management if the company shall fail at any time to pay dividends or interest regularly for a number of consecutive years.

Corporations choose trust companies to fulfill these duties because of their responsibility and familiarity with the subject.

## ESCROWS





## ESCROWS

**A**N escrow has been described as a deed, Escrows  
bond or other written engagement deposited with a third party to be delivered by him to the grantee only upon the performance or fulfillment of some condition within a specified time.

In general practice escrows contemplate comparatively brief periods of time, and instruments so deposited are usually beyond recall during that period.

Escrows may be created for various purposes, for instance when a piece of real estate is sold on installments the deed may be placed in escrow until all payments have been deposited with the escrow holder. This is particularly convenient when the owner of property lives in a State or country foreign to that in which the real property is located.

In the construction of a building or other contract work, funds are frequently deposited in escrow, payments to be made at various stages of progress in the completion of work under contract.

When a corporation proposes an issue of common or preferred stock the securities

**Escrows**

may be deposited in escrow to be ratably delivered to underwriters when and as they shall have made deposits in payment therefor with the escrow holder.

The above are only a few of the many purposes for which escrows may be created. In the custody and delivery of instruments or other property so deposited, holders of escrows are governed by specific directions, and will therefore insist that all conditions be in writing, not verbal, and that said conditions be entirely clear and not subject to more than one possible interpretation.

In selecting the holder or depositary of an escrow, the interested parties will select one who is responsible, absolutely trustworthy, free from prejudice, and one who is sure of continued existence in order that the purpose of the escrow may be fully realized.

The following is a quotation from John H. Sears of the New York Bar. "The organization of the trust company, with its long life, its ability to surrender its contracts to successors upon expiration of its life, its being supervised under strict regulation, and its many other safeguards in respect to the care and custody of property, and especially the making of such care and custody features of business under specific charter



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*“In Witness Whereof”*

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provisions, seems not only for the business world but also for private interests, an agency for the carrying out of escrow agreements of a peculiarly fit nature, and also of agreements in the nature of escrow.”

Escrows





## RECEIVER—ASSIGNEE

**A** CORPORATION sometimes finds itself temporarily in financial difficulty. It is not a question of insolvency, but a condition which perhaps will become rectified if ample time is allowed. To prevent a forced liquidation under adverse circumstances a friendly receiver is sometimes applied for by a corporation, and the court of proper jurisdiction will usually grant such a request if satisfied as to the justice of such a procedure. Receiver

Officials of a successful corporation may for some reason become involved in a controversy with the stockholders, or members of a partnership may become engaged in an argument which among themselves cannot be amicably settled. In either of these events, the parties interested may seek the appointment of a receiver to make an adjustment. Or a corporation may actually be in a state of insolvency, and creditors thereof, to prevent further depletion of the company's resources, and also to provide for a fair and equitable distribution of assets among all creditors, may petition the court for the appointment of a receiver

Receiver

for the insolvent corporation. The acting receiver may carry on the business, subject of course, to certain legal restrictions. In the conduct of the corporation's affairs, the receiver will naturally avail himself of all possible information and knowledge at the disposal of its officers. If the difficulty has arisen through temporary lack of capital, a trust company is in a position to advance funds, if satisfactory security can be provided, to tide the affairs of the corporation over a short depression. This may enable the corporation to recover.

A voluntary assignment of all its property may be made by a corporation for the benefit of its creditors, and such an assignment, if general in character, is generally recognized by State courts. Frequently such action is taken at the urgent request of the corporation's creditors. In either case, it is accomplished by a deed of assignment. The conveyance is acknowledged and recorded in the office of the clerk of the county wherein the debtor resides or carries on his business.

An assignment is attended by the immediate transfer of all property concerned. All claims must be filed and proved if necessary by an order of the court.

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*“In Witness Whereof”*

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The assignee will be guided by certain elements of the law and he must give a complete accounting of his activities. He is personally liable for and charged with any irregular payments or disbursements as well as any loss arising through negligence on his part. In liquidating a corporation through a general conveyance, the assignee must satisfy all creditors with an equal degree of fairness. Due consideration, however, must be given those who hold prior liens against the property. It is also incumbent upon the assignee to collect all debts owing to the corporation, referring to the court, if necessary, in order that all possible assets of the corporation may be realized upon. Assignee

The obvious advantages offered by trust companies acting as receiver or assignee were early recognized by courts. The following extract is a quotation from Justice Roosevelt of the New York Supreme Court in the matter of the Empire City Bank, year of 1855.

“As no mere personal obligation can be equal to the mortgages and public stocks to the amount of one million dollars, pledged as security by the trust company, and as that institution has been created by law,

Assignee

among other objects, for the express purpose of meeting such requirements, I feel no hesitation in making a selection between the nominees. Private preferences in this as in most other judicial acts, must yield to public considerations. No man, and the counsel of no man, has a right to complain that he or his particular friend is not appointed a receiver; especially where the assets, as in these bank cases, to be entrusted to his responsibility, are counted not by tens, but by hundreds of thousands. There are absent parties interested, minors as well as adults; and those who rely, and have a right to rely, exclusively and without professional intervention on the care and vigilance and unbiased judgment of the court."

Again in the same case, "Does not every order appointing a receiver contain by implication if not expressly, a direction that all funds, when collected, shall be kept in some safe depository? The law, in requiring as it does, proper security from a receiver in these cases assumes that, although directed, he may not *do* his duty; and it is only in such a contingency that security is of any importance. And it dispenses with this prerequisite in the case of the appointment of the trust company, only because

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*“In Witness Whereof”*

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its whole capital stock, property and effects **Assignee**  
are by law made absolutely liable for such  
deposits in preference to all other liabilities.”

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